HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.469 of 2007

Between:

The Singareni Collieries Company Limited,
Represented by its General Manager,
Yellandu Area, Khammam District

... Appellant

And

Government of Andhra Pradesh,
Represented by the District Collector,
Khammam District, Khamman
and six others

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri J. Prabhakar

June 14, 2007

Per G.S. Singhvi, CJ

It is settled law that for protection of his civil and legal rights, an individual can avail remedy by filing civil suit except when the same is constitutionally or statutorily barred. He can also approach the High Court and file petition under Article 226 of the Constitution of India for protection of his constitutional and legal rights. But, once the litigant exercises the option of availing remedy by filing civil suit, the High Court will be extremely loath to entertain a writ petition filed in relation to the same or similar or related cause or subject matter.

We have made a mention of the above noted proposition because, after hearing Shri J. Prabhakar, learned counsel for the appellant and perusing the record, we are convinced that the writ

petition filed by the appellant for quashing proceedings bearing Rc.No.E2/128/2004, dated 19.9.2005 issued by respondent No.1 was a frivolous piece of litigation and the learned Single Judge did not commit any error whatsoever by refusing to entertain the same on the ground that the appellant has already availed remedy by filing civil suit.

A perusal of the record shows that the State Government leased out land measuring Ac.953.16 gts. comprised in Survey No.609 of Sudimalla Village, Yellandu Mandal, Khammam District to the appellant. The term of the lease was 30 years, but the same was extended from time to time. Respondent No.7 – Satishlal, S/o.Bindulal is said to have purchased land measuring Ac.3-00 comprised in Survey No.609/2/43. He applied to the Indian Oil Corporation Limited (respondent No.6 herein) for opening a retail outlet on land measuring 1300 sq. yds. He also obtained No Objection Certificate (NOC) from District Collector, Khammam. On coming to know of this, the appellant made a representation to the District Collector for cancellation of the NOC. By an order dated 30.5.2005, the District Collector directed that the NOC be kept in abeyance. The same was challenged by respondent No.7 in Writ Petition No.14085 of 2005, which was disposed of by the learned Single Judge on 12.7.2005 by directing the District Collector to take necessary action after getting a joint survey conducted within six weeks. The Assistant Director, Survey and Land Records (respondent No.5) submitted report dated 11.8.2005. After considering the same, the District Collector restored the NOC issued to respondent No.7.

In the meanwhile, the appellant filed O.S.No.51 of 2005 in the Court of Junior Civil Judge, Yellandu for declaration of its leasehold rights. At one stage, the trial Court granted temporary injunction, but, later on, vacated the same vide its order dated 21.10.2005.

During the currency of temporary injunction granted by Junior Civil Judge, Yellandu, the appellant filed Writ Petition No.22289 of 2005 for quashing order dated 19.9.2005 issued by the District

Collector for restoration of NOC in favour of respondent No.7. On 14.10.2005, a learned Single Judge suspended the implementation of order dated 19.9.2005. However, after hearing the parties, another learned Single Judge dismissed the writ petition by recording the following observations:

> "The question essentially is whether the land claimed by the seventh respondent or his predecessor falls within the area leased out to the petitioner company for mining. There is no dispute that out of the total extent of Acs.1059.02 guntas of land comprised in survey No.609, the land admeasuring Acs.953.16 guntas in sub-divided survey No.609/1 was only leased out to the petitioner company. The balance extent of Acs.105.26 guntas in sub-divided survey No.609/2 was assigned to various persons including the father of the seventh respondent. If in the survey conducted by the fifth respondent pursuant to the orders of this Court, it is found that the land of the seventh respondent falls within the assigned portion of the land in survey No.609, the controversy must rest there. Any further grievance of the petitioner regarding the area cannot be redressed in the writ petition. Now it is brought to the notice of this Court by the counsel for the opposite parties that the petitioner company has already filed suit being O.S.No.51 of 2005 on the file of the Court of the Junior Civil Judge, Yellandu, for declaration of its leasehold rights. Though initially *ad interim* temporary injunction was granted in I.A.No.60 of 2005, subsequently, the Court of the Junior Civil Judge, dismissed application for injunction being I.A.No.60 of 2005, on 21.10.2005. The writ petition is filed before this Court on 18.10.2005, presumably on visualizing that the injunction petition would be dismissed. As the suit is filed for declaration of leasehold rights, the petitioner can always agitate this question before the civil Court. Secondly, a perusal of the Minutes, dated 13.09.2005, would not indicate that any decision was taken to survey land admeasuring Acs.105.26 guntas assigned to eligible persons. A decision was taken to conduct survey through cadastral survey to demarcate the land leased out to the petitioner company. Therefore, as pointed out by the District Collector in the counter affidavit, the petitioner company did not properly safeguard the lands leased out to it, and allowing it be encroached upon by third parties. It is quite probable that the land in the vicinity may be under the encroachment of others and to find out the same, survey is now ordered, which has no bearing on the question

raised by the petitioner company before the District Collector in their application, dated 18.05.2005 after NOC was granted in April, 2005. Therefore, this Court is of considered opinion that there are no merits in the writ petition and the writ petition is liable to be dismissed."

Shri J. Prabhakar, learned counsel for the appellant made efforts to convince us that the subject matter of the suit and the writ petition is not identical and, therefore, the appellant should not have been non-suited by making a reference to the proceedings of the civil suit, but we have not felt convinced. In our considered view, in the suit for injunction filed by it, the appellant could have sought amendment and challenged the proceedings, which were made subject matter of the writ petition. Therefore, we are inclined to agree with the learned Single Judge that the appellant had abused the process of this Court by filing writ petition during the currency of interim injunction passed by the learned Junior Civil Judge, Yellandu.

We are further of the view that the appellant cannot pursue remedies in two courts in relation to the same subject matter. Its claim for declaration of leasehold rights in respect of the land in dispute and challenge to the NOC granted by the District Collector are substantially interconnected. Therefore, instead of filing writ petition, the appellant should have amended O.S.No.51 of 2005 and made a prayer for quashing order dated 19.9.2005.

In the result, the appeal is dismissed. Needless to say that the appellant shall be free to amend the pending suit or file fresh suit for grant of relief for which the writ petition had been filed.

As a sequel to dismissal of the appeal, WAMP No. 884 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

June 14, 2007

C.V. NAGARJUNA REDDY, J

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